



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

August 1, 1996

Mr. Scott A. Durfee  
General Counsel  
Office of the District Attorney  
Harris County  
201 Fannin, Suite 200  
Houston, Texas 77002-1901

OR96-1374

Dear Mr. Durfee:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 35550.

The Harris County District Attorney (the "district attorney") received a request for the following categories of documents:

1. The complete file on all criminal complaints filed by Harry L. Bowles of every individual with Chuck Noll.
2. All files generated[,] prepared[,] or created by the District Attorney's office on all complaints filed as above.
3. The complete investigation prepared by any member of the District Attorney (D.A.) office on the above matters.
4. All correspondence of every nature with anyone or entity regarding any matter dealing with all complaints.
5. All interoffice communications, memos, writings, computer notes or in any form kept or stored, current or closed files regarding above matters.
6. Employment file of Russell Lloyd.

You state that the district attorney will release items supplied by the requestor to the district attorney's office and those items previously disclosed to him. However, you claim that the remainder of the requested information is excepted from disclosure under sections 552.101, 552.102, 552.103, 552.107, and 552.108 of the Government Code. We have considered the exceptions you claimed and have reviewed the documents at issue.

Section 552.108 excepts from disclosure "[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime," and "[a]n internal record or notation of a law enforcement agency or prosecutor that is maintained for internal use in matters relating to law enforcement or prosecution." Gov't Code § 552.108; see *Holmes v. Morales*, 39 Tex. Sup. Ct. J. 781, 1996 WL 325601 (June 14, 1996). We conclude that the district attorney may withhold the first group of documents under section 552.108 of the Government Code. We have marked that group for your convenience.

You claim that Mr. Lloyd's personnel file is excepted from disclosure under section 552.102 of the Government Code. Section 552.102 excepts from disclosure "information in a personnel file, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy." Gov't Code § 552.102(a). In *Hubert v. Harte-Hanks Texas Newspapers*, 652 S.W.2d 546 (Tex. App.—Austin 1983, writ ref'd n.r.e.), the court ruled that the test to be applied to information claimed to be protected under section 552.102 is the same as the test formulated by the Texas Supreme Court in *Industrial Foundation v. Texas Industrial Accident Board*, 540 S.W.2d 668 (Tex. 1976), cert. denied, 430 U.S. 931 (1977) for information claimed to be protected under the doctrine of common-law privacy as incorporated by section 552.101. Therefore, we will address whether section 552.101 applies to any information in this personnel file.

For information to be protected from public disclosure under the common-law right of privacy, the information must meet the criteria set out in *Industrial Foundation v. Texas Industrial Accident Board*, 540 S.W.2d 668 (Tex. 1976), cert. denied, 430 U.S. 931 (1977). The court stated that

information . . . is excepted from mandatory disclosure under Section 3(a)(1) as information deemed confidential by law if (1) the information contains highly intimate or embarrassing facts the publication of which would be highly objectionable to a reasonable person, and (2) the information is not of legitimate concern to the public.

540 S.W.2d at 685; Open Records Decision No. 142 (1976) at 4 (construing statutory predecessor to Gov't Code § 552.101). The type of information considered intimate and embarrassing by the Texas Supreme Court in *Industrial Foundation* included information relating to sexual assault, pregnancy, mental or physical abuse in the workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs. 540 S.W.2d at 683. We have reviewed the submitted personnel

file and conclude that none of that information is protected from disclosure under common-law privacy.

Section 552.117 of the Government Code excepts from public disclosure the home address and home telephone number of a current or former government employee or official. Section 552.117 requires you to withhold this information for an official, employee, or former employee who requested that this information be kept confidential under section 552.024. *See* Open Records Decision Nos. 622 (1994), 455 (1987). You may not, however, withhold this information if the employee had not made a request for confidentiality under section 552.024 at the time this request for the documents was made. Whether a particular piece of information is public must be determined at the time the request for it is made. Open Records Decision No. 530 (1989) at 5.<sup>1</sup>

Federal law may prohibit disclosure of this employee's social security number. A social security number is excepted from required public disclosure under section 552.101 of the act in conjunction with the 1990 amendments to the federal Social Security Act, 42 U.S.C. § 405(c)(2)(C)(viii)(I), if it was obtained or is maintained by a governmental body pursuant to any provision of law enacted on or after October 1, 1990. *See* Open Records Decision No. 622 (1994). Based on the information you have provided, we are unable to determine whether the social security numbers are confidential under this federal statute. We note, however, that section 552.352 of the Government Code imposes criminal penalties for the release of confidential information.

Some of the submitted information may be confidential by law. As mentioned above, section 552.101 encompasses information protected by other statutes. This office has concluded that information collected under the Americans with Disabilities Act, 42 U.S.C. § 12101 *et seq.* (the "ADA"), from an applicant or employee concerning that individual's medical condition and medical history is confidential under section 552.101 of the Government Code, in conjunction with provisions of the ADA. Open Records Decision No. 641 (1996). This type of information must be collected and maintained separate from other information and may be released only as provided by the ADA. We enclose a copy of Open Records Decision No. 641 (1996) for your information. If any of the information on the enclosed applications was collected under the ADA, the district attorney must withhold it pursuant to the reasoning in Open Records Decision No. 641 (1996).

Section 411.083 provides that any criminal history record information ("CHRI") obtained from the Department of Public Safety ("DPS") is confidential and may be

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<sup>1</sup>We note that section 552.117 was amended in the last legislative session. Act of May 29, 1995, 74th Leg., R.S., ch. 1035, § 9, 1995 Tex. Gen. Law 5127, 5132. As this request for information was received before September 1, 1995, we do not address the effect of the amended section on requests for similar information received by governmental bodies after September 1, 1995. *See id.* § 26, 1995 Tex. Gen. Law at 5142.

disclosed in very limited circumstances. Gov't Code § 411.084. We have marked the information that must be withheld under this statute.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,

A handwritten signature in cursive script, reading "Stacy E. Sallee".

Stacy E. Sallee  
Assistant Attorney General  
Open Records Division

SES/ch

Ref.: ID# 35550

Enclosures: Submitted documents

cc: Mr. Harry L. Bowles  
306 Big Hollow Lane  
Houston, Texas 77042  
(w/o enclosures)